

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HTC Corporation and HTC America, Inc.

Plaintiffs,

v.

Nokia Corporation, Nokia Technologies Oy,
Nokia Solutions and Networks Oy, Nokia
Solutions and Networks US LLC, Nokia USA
Inc., Alcatel-Lucent S.A., and Alcatel-Lucent
USA Inc.,

Defendants.

CASE NO.: 2:16-cv-1984

**COMPLAINT FOR:
(1) BREACH OF CONTRACT;
(2) BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH &
FAIR DEALING; and
(3) PROMISSORY ESTOPPEL.**

JURY DEMAND

INTRODUCTION

1. Plaintiffs HTC Corporation and HTC America, Inc. (collectively, “HTC”) bring these claims to require Defendants Nokia Corporation, Nokia Technologies Oy, Nokia Solutions and Networks Oy, Nokia Solutions and Networks US LLC, Nokia USA Inc., Alcatel-Lucent S.A., and Alcatel-Lucent USA Inc. (collectively, “Nokia”), to abide by their promises to license certain patents—patents that Nokia itself deemed “essential” to the standards adopted by the cellular and wireless technology industry—on terms that are “fair, reasonable, and nondiscriminatory” or “FRAND”.

2. Today’s technology markets are increasingly dependent on the orderly and consensus-based adoption of various “standards” within particular industries. According to the Federal Trade Commission, the promulgation and adoption of technology standards “are widely acknowledged to be one of the engines of the modern economy” and “serve as a fundamental building block for international trade.”¹ Cellular and wireless technology, and the companies that manufacture mobile devices that use that technology, are especially dependent on standards. The widespread adoption of uniform standards is critical to the interoperability of phones, tablets, and other mobile devices and has propelled the rapid advancement of these globe-changing products. In addition to developers and providers, consumers benefit tremendously from these accepted standards because they provide freedom to choose the best products at the lowest prices.

3. In order to practice industry standards, it is often necessary for the market to use patented technology that is “essential” to that particular standard. To protect companies from the possibility that patent holders will abuse their market power, engage in patent hold-up, or demand unreasonable terms once their technology has been chosen, the markets depend on a licensing paradigm known as FRAND—i.e., that licenses for these “essential” patents will be

¹ U.S. Dep’t of Justice and U.S. Fed. Trade Comm’n, *Antitrust Enforcement and Intellectual Property Rights: Promoting Competition and Innovation April 2007 Report* (Apr. 17, 2007), <https://www.justice.gov/sites/default/files/atr/legacy/2007/04/17/intro.pdf>.

1 available on license terms that are fair, reasonable, and non-discriminatory to anyone who seeks
2 to practice the standard. As its name suggests, FRAND pricing ensures an equal playing field
3 (regardless of negotiating power) and controls the pricing to license standard-essential patents.
4 In doing so, FRAND terms encourage development, collaboration, and competition.

5 4. This dispute involves the technology standards underlying the world's cellular
6 networks, including second generation (2G), third generation (3G), and fourth generation (4G)
7 telecommunications standards, as well as wireless local area network ("WLAN") standards. As
8 cellular and wireless technologies became a pervasive part of daily life for billions of people
9 around the globe, Nokia sought to capitalize on that explosive growth by participating in
10 international standards-setting organizations, such as ETSI² and the IEEE-SA.³ Then, pursuant
11 to ETSI's and the IEEE-SA's policies, Nokia and its subsidiaries and affiliates began designating
12 thousands of its patents as "essential" to ETSI's telecommunications standards and the IEEE-
13 SA's wireless standards. Having voluntarily designated its technology as "essential" to these
14 standards—a designation that Nokia itself sought—Nokia is now bound to offer licenses to these
15 patents on FRAND⁴ terms. In other words, Nokia is contractually obligated to offer license
16 terms that are fair, reasonable, and non-discriminatory to each and every company that needs and
17 is willing to pay for a license to these patents.

18 5. HTC—a leading manufacturer of mobile products that has consistently
19 demonstrated its respect for intellectual property and patent rights—is one such licensee and has
20

21 ² Short for the European Telecommunications Standards Institute, ETSI produces global standards for
22 Information and Communications Technologies (ICT), including fixed, mobile, radio, converged,
23 broadcast and Internet technologies. ETSI is a not-for-profit organization with more than 800 member
organizations in 68 countries and five continents.

24 ³ Analogous to ETSI, the Institute of Electrical and Electronics Engineers Standards Association, the
25 IEEE-SA produces the global standards in a broad range of disciplines, including electric power and
26 energy, biomedical technology, information technology, information assurance, telecommunications,
consumer electronics, transportation, aerospace, and nanotechnology.

27 ⁴ Although the IEEE-SA uses the term RAND (reasonable and nondiscriminatory) rather than
FRAND, the two terms are generally used interchangeably by the industry.

1 been so since 2003. Specifically, HTC has held a license to Nokia's portfolio of standards-
2 essential patents ("SEPs") since 2003 and has made significant payments to Nokia over the years
3 to maintain that license. Although the current Nokia/HTC license terms are confidential,
4 publicly-available information makes plain that Nokia has profited handsomely from its SEP
5 portfolio from the myriad of companies that practice these standards, including HTC.

6 6. In addition to making substantial payments to Nokia, HTC has also contributed to
7 the widespread adoption of telecommunications and wireless standards, particularly 3G and 4G
8 standards, and their subsequent advancement throughout the globe. HTC made those
9 investments in reliance on the promises by Nokia (and other SEP holders) that HTC would
10 receive FRAND pricing for the life of the telecommunications SEPs. Thanks in part to HTC's
11 early adoption of 3G and 4G, and its subsequent years of innovation, HTC helped turn Nokia's
12 SEPs into a very lucrative asset that Nokia has been enjoying for years.

13 7. Years later, as the industry licenses are coming due for renegotiation, Nokia is
14 breaching its promises to adhere to FRAND principles. Instead, Nokia is abusing its patent
15 position and making unreasonable licensing demands that do not reflect market realities or any
16 objective FRAND royalty valuation methodology.

17 8. HTC's SEP license with Nokia, for example, is set to expire on December 31,
18 2016. HTC has communicated its willingness to license Nokia's SEPs, and is seeking to enter a
19 new license to Nokia's SEP portfolio. Times have changed though, and the market conditions
20 today are not the same as when the parties first negotiated this license in 2003. In 2003, for
21 example, the cellular industry was growing exponentially, Nokia was a market leader with
22 superior negotiating power, and HTC's own revenues were growing at an incredible rate.

23 9. Today, the world looks very different. 2G and 3G are now legacy technologies,
24 and even 4G will soon give way to the next generation of telecommunications standards. Far
25 from the market leader it once was, Nokia underwent a meteoric collapse until its handset
26 business was acquired by Microsoft. Likewise, the product features driving pricing and
27 consumer demand now have nothing to do with 2G, 3G, or 4G technology (e.g., camera

1 functionality, storage capacity, touch screen, user interface, operating system, and applications).
2 Further, Nokia's SEPs have begun to expire at a rapid rate—a trend that will only accelerate over
3 the life of the license at issue here. Finally, like other manufacturers in this industry, the average
4 selling price (ASP) for HTC's mobile devices (despite increasingly superior product features)
5 has dropped dramatically in recent years.

6 10. With declining growth, new technologies and features, an expiring patent
7 portfolio, and lower ASPs, the value of Nokia's SEPs are significantly in decline. Rather than
8 acknowledging this reality—which it must under FRAND principles—Nokia is demanding
9 licensing fees that are unreasonable and unsupported by any defensible valuation methodology.
10 Nokia publicly acknowledges as much. For example, Nokia unflinchingly demands royalties
11 based on the overall value of the entire smartphone or tablet computer. The shortcomings to
12 this methodology are obvious, i.e., it does not account for the product features that
13 manufacturers, like HTC, have added to their devices over the last 13 years or the emergence of
14 alternative and next-generation technologies. Because they are divorced from market
15 conditions, Nokia's demands are inherently unreasonable and unfair.

16 11. To be clear, HTC does not dispute that there is some value left in Nokia's SEP
17 portfolio or that HTC should pay a fair and reasonable rate to license Nokia's SEP portfolio. But
18 Nokia's 2G, 3G, and 4G SEPs are worth substantially less today than they were when the
19 industry first adopted the standards in the early 2000s, and Nokia is obligated to offer license
20 terms that are fair and reasonable under current circumstances. Because Nokia did not provide a
21 fair and reasonable valuation methodology for its SEP portfolio, HTC has done that work
22 itself. Specifically, HTC commissioned experts from the telecommunications field and industry
23 to evaluate Nokia's SEP portfolio using standard intellectual property valuations. These
24 evaluations revealed that the actual fair and reasonable value of Nokia's SEPs is substantially
25 less than what Nokia is demanding. Accordingly, HTC responded to Nokia's demands by
26 making an offer that is fair, reasonable, and consistent with the valuations performed by HTC's
27 industry experts. Nokia, however, rejected HTC's fair and reasonable offer.

1 12. Nokia's licensing practices not only violate its contractual obligations to license
2 its SEPs on FRAND terms, but it also violates black-letter patent law, especially recent case law
3 regarding reasonable royalties calculations. For example, FRAND royalties must use the proper
4 royalty base and a proper royalty rate. And FRAND royalties must reflect the actual technical
5 contribution of the patented technology—rather than (a) the value of all the technologies
6 incorporated in an entire standard, (b) the “lock in” value that arises from standardization of
7 technologies—in which technologies gain value simply because companies must use them as
8 part of the standard, and (c) the value of an entire device embracing many technologies beyond
9 the standard.

10 13. As a matter of black-letter patent law regarding patent valuation, patent royalties
11 are typically determined from a royalty base that begins with the smallest saleable unit that
12 substantially embodies the patented functionality—and that base may need to be further
13 apportioned to isolate the value of the patented invention. And the royalty rate applied to that
14 base must be reasonable and recognize other royalties levied by other patent holders on the
15 royalty base—to avoid the problem of an unduly high total “royalty stack.” The final royalty
16 calculation must also account for end products that incorporate already-licensed components,
17 such as chip components sold to HTC by a licensed manufacturer.

18 14. Nokia's royalty rates from its 2003 agreements with HTC pre-date many of the
19 landmark cases outlining these basic patent valuation principles, but the new and forward-
20 looking license must reflect these changes in patent law to be considered fair and reasonable.

21 15. By demanding unreasonable and unfair rates, Nokia is abusing its market power
22 and its patent protection, in clear breach of its contractual obligations and breaking its promises
23 to ETSI, the IEEE-SA, HTC, and all of the other adopters of 2G, 3G, 4G, and WLAN
24 technologies. If allowed, Nokia's improper demands will result in significant damages to HTC,
25 frustrate HTC's ability to offer competitively-priced products, and inhibit innovation. And if left
26 unchecked, Nokia's abusive practices will not only disrupt the wireless industry and increase
27 costs but will embolden holders of other essential patents (in this industry and others) to demand

1 extortionate rates when their own licenses come up for renewal, thereby undercutting the
 2 FRAND licensing paradigm that is necessary to build trust and consensus and encourage
 3 investment in nascent or emerging standards in the first place.

4 16. Accordingly, HTC brings this complaint for (i) breach of contract; (ii) breach of
 5 the implied covenant of good faith and fair dealing; and (iii) promissory estoppel; and seeks
 6 relief in the form of: (i) a judicial declaration that Nokia's FRAND promises constitute
 7 contractual obligations that are binding and enforceable by HTC; (ii) a judicial declaration that
 8 Nokia has breached these obligations by demanding excessive and discriminatory royalties from
 9 HTC; (iii) a judicial decree enjoining Nokia from further demanding excessive royalties from
 10 HTC that are not consistent with Nokia's FRAND obligations; (iv) a judicial accounting of what
 11 constitutes a FRAND royalty rate consistent with Nokia's promises to license its patents
 12 identified as (or alleged to be) essential to the 2G, 3G, 4G, and WLAN standards.

13 **THE PARTIES**

14 **A. HTC**

15 17. Plaintiff HTC Corporation is a Taiwanese corporation with its principal place of
 16 business at 23 Xinghua Road, Tayouan 330, Taiwan, R.O.C.

17 18. Plaintiff HTC America Inc. ("HTC America") is a Washington corporation with
 18 its principal place of business at 308 Occidental Ave S, Seattle, WA 98104. HTC America is a
 19 wholly-owned American subsidiary of HTC Corporation that sells cellular and wireless devices
 20 in the United States.

21 19. Founded in 1997, HTC is a pioneer in the smartphone market, credited with many
 22 industry firsts and technology breakthroughs over the past 19 years—a history defined by
 23 innovation, design and engineering excellence, and the building of strategic partnerships to
 24 facilitate the development of an industry ecosystem. HTC has invested heavily in research and
 25 development, which accounts for about a third of its employees.

26 20. HTC's growth accelerated dramatically in the early 2000s when it was selected to
 27 be Microsoft's first hardware platform development partner for the Windows Mobile operating

1 system (based on Windows CE). HTC similarly partnered with Google to build the first mobile
 2 phone running Google's Android mobile OS, the G1. Through these efforts, and others, HTC
 3 was amongst the pivotal players that adopted and advanced 3G technology, including its
 4 introduction to, and widespread adoption by, consumers around the globe. By 2005, HTC's
 5 annual sales revenue totaled more than \$2 billion, and it was recognized as the fastest-growing
 6 tech company in BusinessWeek's Info Tech 100. Since then, the market has changed
 7 significantly—both in terms of market share and overall growth.

8 **B. NOKIA**

9 21. On information and belief, Defendant Nokia Corporation is a Finnish corporation
 10 with its principal place of business in Espoo, Finland.

11 22. On information and belief, Defendant Nokia Technologies Oy ("Nokia
 12 Technologies") is a Finnish corporation. On information and belief, including through its
 13 website,⁵ Nokia Technologies has its principal place of business and headquarters in Sunnyvale,
 14 California, and has offices in Los Angeles, California, San Francisco, California, and Boston,
 15 Massachusetts. Nokia Technologies is a wholly-owned subsidiary of Nokia Corporation that
 16 develops, owns, and licenses standards-essential patents as part of Nokia's SEP portfolio.

17 23. On information and belief, Defendant Nokia Solutions and Networks Oy ("NSN
 18 Oy") is a Finnish corporation with its headquarters in Espoo, Finland and an office in Redmond,
 19 Washington. NSN Oy is also a wholly-owned subsidiary of Nokia Solutions and Networks B.V.,
 20 which is a wholly-owned subsidiary of Nokia Finance International B.V., which is a wholly-
 21 owned subsidiary of Nokia Corporation. On information and belief, including through
 22 negotiation communications from Nokia Technologies to HTC, Nokia Solutions and Networks
 23 Oy develops and owns standards-essential patents that are part of Nokia's SEP portfolio.

24 24. On information and belief, Defendant Nokia Solutions and Networks US LLC
 25 ("NSN US") is a Delaware limited liability corporation with its principal place of business in
 26

27 ⁵ Available at http://www.nokia.com/en_int/about-us/who-we-are/our-businesses/nokia-technologies.

1 Irving, Texas and an office in Redmond, Washington. On information and belief, NSN US has a
2 single governing member, Ricky Corker at 6000 Connection Drive, Irving Texas 95039. NSN
3 US is a wholly-owned subsidiary of Nokia Solutions and Networks Holdings USA Inc., which is
4 a wholly-owned Delaware subsidiary of Nokia Solutions and Networks B.V., which is a wholly-
5 owned Dutch subsidiary of Nokia Finance International B.V., which is a wholly-owned Dutch
6 subsidiary of Nokia Corporation. NSN US develops and owns standards-essential patents that
7 are part of Nokia's SEP portfolio.

8 25. On information and belief, Defendant Alcatel-Lucent S.A. ("ALU") is a French
9 corporation with its principal place of business in Boulogne-Billancourt, France. ALU is a
10 wholly-owned subsidiary of Nokia Corporation. On information and belief, including through
11 negotiation communications from Nokia Technologies to HTC, ALU develops and owns
12 standards-essential patents that are part of Nokia's SEP portfolio.

13 26. On information and belief, Defendant Alcatel-Lucent USA Inc. ("ALU USA") is
14 a wholly-owned subsidiary of Alcatel-Lucent S.A., which is wholly-owned subsidiary of Nokia
15 Corporation. ALU USA is a Delaware company with its principal place of business in New
16 Providence, New Jersey. ALU USA is a wholly-owned U.S. subsidiary of ALU that develops
17 and owns standards-essential patents that are part of Nokia's SEP portfolio.

18 27. On information and belief, Defendant Nokia USA Inc. ("Nokia USA") is a
19 Delaware corporation with its principal place of business in Sunnyvale, CA. Nokia USA is a
20 wholly-owned subsidiary of Nokia Corporation that develops and owns standards-essential
21 patents that are part of Nokia's SEP portfolio.

22 28. Nokia Corporation was founded in 1865 and has engaged in various industries
23 during its 151-year history. By the 1980s, Nokia was an industrial conglomerate with a fledgling
24 mobile phone business. In the 1990s, Nokia began investing heavily in the development of
25 Global System for Mobile communications ("GSM") at a time when the cellphone industry was
26 highly fragmented with multiple vendors who looked at the market on a country-by-country
27 basis. In 1998, Nokia overtook Motorola becoming the world's largest phone manufacturer. In

1 2003, the top-selling mobile phone in the world was the Nokia 1100, which sold 250 million
2 units. In 2007, Nokia had a market share of 80 percent of the smartphone market. Since then,
3 Nokia has undergone a significant plummet and ultimately sold its mobile handset device
4 business to Microsoft in 2013. Although its business is continually changing, today Nokia
5 Corporation, through its subsidiaries, such as Nokia Technologies, focuses on exploiting its
6 patent portfolios.

7 **JURISDICTION AND VENUE**

8 29. This Court has jurisdiction over the subject matter of this dispute pursuant to 28
9 U.S.C. § 1332 because this is an action between citizens of different states and because the value
10 of declaratory and injunctive relief sought, the value of HTC's rights this action will protect and
11 enforce, and the extent of the injury to be prevented exceed the amount of \$75,000, exclusive of
12 interest and costs.

13 30. On information and belief, Defendants are subject to this Court's general personal
14 jurisdiction, consistent with the principles of due process and the Washington Long Arm Statute,
15 at least because Defendants maintain offices and facilities in the Western District of Washington,
16 have employees in the Western District of Washington, offer products for sale in the Western
17 District of Washington, and/or have transacted business in this District, including directing
18 negotiation communications about the subject matter of this dispute with Seattle-based HTC
19 America Inc. In addition to maintaining offices in Redmond, Washington, Defendants also have
20 offices throughout the United States, including Arizona, California, Connecticut, Florida,
21 Georgia, Illinois, Kansas, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Texas,
22 and Virginia. Accordingly, Defendants transact substantial business in this District and
23 throughout the United States, and thus voluntarily avail themselves of the laws of the United
24 States and Washington so as to be subject to the jurisdiction of this Court.

25 31. Defendants are also subject to specific personal jurisdiction in Washington.
26 Defendants seek to negotiate payments for a license covering products sold by HTC America,
27 which has its principal place of business in Seattle Washington. Additionally, HTC Corporation,

on behalf of its subsidiary HTC America located in Washington, has been involved in negotiations with Nokia attempting to obtain a FRAND rate for the license that would be granted by Defendants.

32. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(a), 1391(c), and 1931(d).

BACKGROUND

A. INTRODUCTION TO STANDARDS

33. The development and adoption of industry standards is a critical aspect of today's technology market. In simple terms, a standard provides rules or guidelines to achieve consensus and order in regards to a particular technology. In the context of telecommunications technology, standards provide interconnection and interoperability so that users, who are increasingly mobile and use a variety of products from different manufacturers, can "mix and match" equipment, services, and providers.

34. As the U.S. Federal Trade Commission has recognized:

Industry standards are widely acknowledged to be one of the engines of the modern economy. Standards can make products less costly for firms to produce and more valuable to consumers. They can increase innovation, efficiency, and consumer choice; foster public health and safety; and serve as a "fundamental building block for international trade." Standards make networks, such as the internet and telecommunications, more valuable to consumers by allowing products to interoperate.⁶

35. Technology standards are typically promulgated by entities known as "Standard Development Organizations" or "SDOs" whose participants voluntarily engage in the standards program to benefit their members and affiliates, including third parties implementing the standards, as well as the end users of the products.⁷

⁶ U.S. Dep't of Justice and Fed. Trade Comm'n, *Antitrust Enforcement and Intellectual Property Rights: Promoting Competition and Innovation April 2007 Report* (Apr. 17, 2007), <https://www.justice.gov/sites/default/files/atr/legacy/2007/04/17/intro.pdf>.

⁷ The engineers and developers who work on the technologies that are adopted by the SDOs are not employees of those SDOs. Instead, they are usually employees of companies in the industry, such as

(continued...)

36. SDO participants enjoy significant potential benefits to having their technology adopted by the SDO. Most obviously, when a standard is broadly adopted, the patent holder is likely to receive royalties (on a FRAND basis) from a large pool of adopters for many years. But there are other benefits as well, including recognition as a leader in the industry, increased demand for the patent holder's other products, internal familiarity with the selected technology (potentially leading to a head start or shorter development times), and improved compatibility with products made by third parties that also use the adopted standard.

B. ETSI AND THE IEEE-SA, THEIR STANDARDS, AND THEIR INTELLECTUAL PROPERTY RIGHTS POLICIES

37. Several SDOs and other collaborations are relevant here. As discussed above, ETSI is an independent, non-profit SDO that is responsible for the standardization of information and communication technologies, including mobile cellular technologies. 3GPP is a collaborative group of recognized SDOs in the information and communication industry, including ETSI. ETSI and 3GPP have jointly worked together, and with others in the cellular industry, for years to develop broadly accepted standards for cellular technologies, including 2G, 3G, and 4G. The IEEE Standards Association ("IEEE-SA") is the standards-setting arm of the IEEE. The IEEE-SA promulgates technical standards in a variety of fields, including wireless communications and telecommunications.

38. To ensure that adopters are not captive to abusive and anticompetitive practices by patent holders, ETSI and the IEEE-SA—like other SDOs—adopted rules, policies, and procedures that create a paradigm for disclosing and licensing patents that are "essential" to the standards under consideration. These rules, policies, and procedures are set out in the intellectual property rights ("IPR") policies ("IPR Policies").

(...continued from previous page)
Qualcomm, Samsung, Alcatel-Lucent, Nokia, Motorola, Nortel, and others that are members of the SDOs and participate in the standard-setting process. Many of these companies file for patents that cover technologies they believe are essential to implement the standards.

39. Many IPR Policies, including ETSI's and the IEEE-SA's, require participants to timely disclose any IPRs (such as patents or patent applications) that the patent holder reasonably believes will become essential to the standard under consideration. These disclosures permit the SDOs and their members to evaluate technologies with knowledge of disclosed IPRs that may affect the costs of implementing the standard. IPR Policies, including ETSI's and the IEEE-SA's, also require participants claiming to own relevant patents to grant licenses for those patents with any implementer of the standard on FRAND terms.

40. ETSI's IPR Policy unambiguously requires the patent owner to grant irrevocable licenses on FRAND terms for patents that are essential to its standards.

41. Specifically, Clause 6 of ETSI's IPR Policy states:

When an ESSENTIAL IPR relating to a particular STANDARD or TECHNICAL SPECIFICATION is brought to the attention of ETSI, the Director-General of ETSI shall immediately request the owner to give within three months an irrevocable undertaking in writing that it is prepared to grant irrevocable licenses on fair, reasonable and non-discriminatory ("FRAND") terms and conditions.

42. If the essential IPR owner refuses to undertake the requested commitment and informs ETSI of that decision, the ETSI General Assembly must "review the requirement for that STANDARD or TECHNICAL SPECIFICATION and satisfy itself that a viable alternative technology is available for the STANDARD or TECHNICAL SPECIFICATION" that is not blocked by that IPR and satisfies ETSI's requirements. ETSI IPR Policy, cl. 8.1.1. Absent such a viable alternative, the ETSI IPR Policy requires that "work on the STANDARD or TECHNICAL SPECIFICATION shall cease." *Id.*, cl. 8.1.2. In other words, ETSI will not agree to incorporate a member's technology in a standard under consideration unless the member irrevocably binds itself to granting licenses on FRAND terms.

43. The IEEE-SA had an IPR policy at the time it was drafting the 802.11 (WLAN) protocols. Under the IPR policy, individuals participating in the IEEE standards development who believed an entity owned patents or patent applications that might be "essential" to

1 implement an IEEE standard under development, the IEEE-SA would request Letters of
2 Assurance from those entities.

3 44. The requirements for the Letters of Assurance sought by the IEEE are set forth in
4 Clause 6 of the IEEE-SA Standards Board Bylaws. Clause 6 of those Bylaws (which was
5 revised slightly over the years) provides in pertinent part:

6 A Letter of Assurance shall be either:

7 a) A general disclaimer to the effect that the submitter without
8 conditions will not enforce any present or future Essential Patent
9 Claims against any person or entity making, using, selling,
10 offering to sell, importing, distributing, or implementing a
11 compliant implementation of the standard; or

12 b) A statement that a license for a compliant implementation of
13 the standard will be made available to an unrestricted number of
14 applicants on a worldwide basis without compensation or under
15 reasonable rates, with reasonable terms and conditions that are
16 demonstrably free of any unfair discrimination.

17 45. If the Letters of Assurance were not provided for patents asserted to be “essential”
18 by participants, the IEEE working group either would revise the standard to avoid any potential
19 issues related to those patents, discontinue work on the standard altogether, or otherwise proceed
20 in a way that avoided exposure to discriminatory patent assertions and/or unreasonable licensing
21 terms.

22 46. IPR Policies are critical protections for all the market and those companies that
23 build products using the adopted standard. As the United States Federal Trade Commission
24 recently explained,

25 [SDOs] have this policy because the incorporation of patented technology
26 into a standard induces market reliance on that patent and increases its
27 value. After manufacturers implement a standard, they can become
“locked-in” to the standard and face substantial switching costs if they
must abandon initial designs and substitute different technologies. This
allows [standard-essential patent] holders to demand terms that reflect not
only “the value conferred by the patent itself,” but also “the additional
value—the hold-up value—conferred by the patent’s being designated as
standard-essential.” The FRAND commitment is a promise intended to
mitigate the potential for patent hold-up. In other words, it restrains the

1 exercise of market power gained by a firm when its patent is included in a
 2 standard and the standard is widely adopted in the market.⁸

3 47. Thus, IPR Policies and members' commitment to encourage participants and
 4 affiliates to contribute their technologies to the standards and/or to implement the standards
 5 works to the benefit of consumers, who would be harmed by higher prices and fewer options if
 6 owners of standards-essential patents were able to demand unfair, unreasonable, or
 7 discriminatory licensing terms.

8 Mobile Cellular and Wireless Standards

9 48. At issue here are Nokia's patents that Nokia itself claims are essential to the 2G,
 10 3G, 4G, and WLAN standards.

11 49. The mobile cellular technologies described by the 2G, 3G, and 4G standards
 12 (collectively the "Mobile Cellular Standards") are enabling second, third, and fourth generation
 13 technologies for mobile voice and data communications. 2G technology was a culmination of
 14 work that began in the 1980s as a replacement for first generation ("1G") analog cellular
 15 networks for voice communications. The first 2G cellular telecom networks were commercially
 16 launched on the GSM standard in Finland in 1991. The first GSM network became operational
 17 in the United States in 1995.

18 50. The adoption of 3G and 4G technology was driven by the demand for greater
 19 transmission capacity and speed compared to the existing technologies available in earlier
 20 generation technology. For example, 3G UMTS uses WCDMA (wideband CDMA), a
 21 technology used to increase the amount of data that can be exchanged on the bandwidth of
 22 mobile telecommunications. 3G mobile phones can, in addition to classic voice calls, transmit
 23 and receive data such as, for example, downloading of music and video files.

24
 25
 26 ⁸ U.S. Fed. Trade Comm'n, *Analysis of Proposed Consent Order to Aid Public Comment In the*
 27 *Matter of Motorola Mobility LLC and Google Inc.*, File No. 121-0120 (Jan. 2013),
<https://www.ftc.gov/sites/default/files/documents/cases/2013/01/130103googlemotorolaanalysis.pdf>.

1 51. A 4G network goes further. 4G LTE provides mobile ultra-broadband Internet
2 access, for example to laptops with USB wireless modems, to smartphones, and to other mobile
3 devices. Many 4G networks are also compatible with legacy 2G and 3G systems. This allows
4 users to make connections regardless of their geographic location or type of mobile phone, and
5 especially when operating in an area where there is no 4G network. Thus, the majority, if not all,
6 of the marketed 4G mobile phones can also function in 3G and/or 2G modes.

7 52. WLAN or “Wi-Fi” and/or “802.11” (“Wireless Standards”) is a widely practiced
8 standard for wireless Internet connectivity that enables an electronic device to access the Internet
9 wirelessly at high speeds over short distances. WLAN networks typically consist of one or more
10 access points that are connected to an Ethernet local area network, each of which communicates
11 by radio signals with devices such as notebook computers and other electronics devices. The use
12 of WLAN technology has grown in the United States since its introduction in the 1990s.
13 Manufacturers now offer WLAN connectivity in a wide array of devices and for many different
14 reasons and purposes.

15 Nokia’s Involvement in Development of the Wireless Standards

16 53. Nokia is a member of ETSI and 3GPP, and an alleged contributor to the ETSI
17 standard. Nokia declared numerous IPRs to ETSI, including United States patents and patent
18 applications assigned to Nokia. In addition, upon information and belief, Nokia has played a role
19 in the 3GPP standardization process.

20 54. As a 3GPP “Individual Member,” Nokia is “bound by the IPR policy” of ETSI.
21 At various times, Nokia, along with its subsidiaries and affiliates, has declared to ETSI that a
22 number of its patents and patent applications are or are likely to become essential to one or more
23 of the Mobile Cellular Standards. Consistent with, and pursuant to, ETSI’s IPR Policies, Nokia
24 has submitted an IPR Information Statement and Licensing Declaration for each patent or patent
25 application it believes to be standard-essential. In each such declaration, Nokia promised to
26 “grant irrevocable license under the IPRs on terms and conditions which are in accordance with
27 Clause 6.1 of the ETSI IPR policy.” Nokia has submitted at least 294 ETSI IPR Licensing

1 Declaration forms through which it has declared a large number of its United States and foreign
2 patents and patent applications essential to the standards. Many of these patents and patent
3 applications were assigned to and licensed by Nokia Corporation's wholly-owned licensing
4 subsidiaries.

5 55. In reliance on declarations such as the ones submitted by Nokia, ETSI released
6 the Mobile Cellular Standards. Once Nokia disclosed that it held essential patents, absent a
7 licensing commitment from Nokia that it would grant licenses to these patents on FRAND terms,
8 ETSI would have: (1) revised the standards to employ alternative technologies, (2) stopped
9 working on the standards, or (3) taken other action to ensure the Mobile Cellular Standards
10 would be available for use by everyone on FRAND terms and conditions.

11 56. In submitting its declarations in accordance with ETSI's IPR Policy, Nokia
12 entered into a contract with ETSI for the benefit of ETSI members and any entity that
13 implements and/or adopts the Mobile Cellular Standards. Nokia is bound by its agreements to
14 license its patents consistent with the referenced ETSI IPR Policy. HTC is, therefore, a
15 beneficiary of Nokia's contractual obligations and promises to ETSI.

16 57. Nokia further clarified these commitments at the end of the 2015 when it
17 announced its acquisition of Alcatel-Lucent. In exchange for approval of the deal by the Chinese
18 Ministry of Commerce, Nokia made a series of commitments, including a promise, based on the
19 principle of equality, that it would cease its pursuit of a standard-essential patent injunction to
20 prevent implantation of standards with FRAND commitments.

21 58. Similarly, Nokia is a member of the IEEE and an alleged contributor to the
22 WLAN standard. Nokia declared numerous IPRs to the IEEE-SA, including United States
23 patents and patent applications assigned to Nokia. In addition, upon information and belief,
24 Nokia has played a role in the WLAN standardization process.

25 59. Nokia submitted Letters of Assurance pursuant to Clause 6 of the IEEE-SA
26 Standards Board Bylaws that it would offer to license any of its patents or patent applications
27 that it identified as "essential" to the applicable WLAN standards to any entity under reasonable

1 rates on a non-discriminatory basis. The IEEE and its participants and affiliates relied on
2 Nokia's promises in developing, adopting and implementing the IEEE-SA technical standards.
3 These standards are now implemented worldwide in a variety of electronic devices that have
4 become commonplace.

5 **C. HTC'S RELIANCE ON COMMITMENTS WITH RESPECT TO THE**
6 **MOBILE CELLULAR AND WIRELESS STANDARDS**

7 60. In reliance on the integrity of the SDO process and the commitments made by
8 Nokia regarding the IPRs that it deems essential, HTC developed, marketed, and sold its mobile
9 phone products with the 3G, 4G, and/or Wi-Fi connectivity.

10 61. HTC has invested substantial resources in developing and marketing products that
11 implement these standards worldwide, including in the United States, and particularly in
12 Washington. HTC did so in reliance on the assurances of participating IPR holders—including
13 Nokia—that any patents identified pursuant to ETSI's and the IEEE-SA's IPR Policies by such
14 IPR holders would be licensed on FRAND terms, regardless of whether such IPRs were, in fact,
15 used in any particular implementation. Accordingly, HTC is a third-party beneficiary of Nokia's
16 FRAND commitments to ETSI, 3GPP, and the IEEE-SA.

17 **D. THE 2003 NOKIA/HTC LICENSING AGREEMENTS AND**
18 **SUBSEQUENT DECLINING VALUE OF NOKIA'S SEPS**

19 62. In 2003, HTC signed a license to Nokia's portfolio of patents essential to the
20 Mobile Cellular and Wireless Standards pursuant to its express understanding that the licenses
21 were, and would remain, subject to FRAND pricing. The agreement was amended in 2004 and
22 again 2011 to expand coverage and duration.

23 63. Although the terms of the 2003 license and amendments are confidential, they
24 were negotiated in a different era when 2G, 3G, and 4G were cutting-edge technologies that
25 represented a significant step forward in data capacity and speed. The mobile device market was
26 rapidly expanding, as smartphones were introduced to and embraced by both enterprise and
27 individual consumers.

64. The parties themselves were in very different positions as well. HTC was a dominant market player whose growth was rapidly accelerating after being selected to be Microsoft's first hardware platform development partner for the Windows Mobile operating system (based on Windows CE). HTC also partnered with Google to build the first mobile phone running Google's Android mobile OS, the G1. HTC's sales revenue totaled more than \$2 billion for 2005, and HTC was listed as the fastest-growing tech company in BusinessWeek's Info Tech 100.

65. In the 1980s and 1990s, Nokia was also a dominant market player. Since then, Nokia's market share and revenues have plunged. Some commentators attribute Nokia's decline to its refusal to embrace features introduced by others, such as the touch screen, and failure to modernize its operating system—features that are all unrelated to the Mobile Cellular and Wireless Standards. In a 2010 memo published by the Wall Street Journal, Nokia CEO Stephen Elop acknowledged that the market was dominated by companies like Apple not because of Apple's implementation of mobile telecommunications technology but because of advancements of well-designed applications:

In 2008, Apple's market share in the \$300+ price range was 25 percent; by 2010 it escalated to 61 percent. They are enjoying a tremendous growth trajectory with a 78 percent earnings growth year over year in Q4 2010. Apple demonstrated that if designed well, consumers would buy a high-priced phone with a great experience and developers would build applications. They changed the game, and today, Apple owns the high-end range. [W]e have Symbian. It has proven to be non-competitive in leading markets like North America. Additionally, Symbian is proving to be an increasingly difficult environment in which to develop to meet the continuously expanding consumer requirements, leading to slowness in product development and also creating a disadvantage when we seek to take advantage of new hardware platforms. As a result, if we continue like before, we will get further and further behind, while our competitors advance further and further ahead.⁹

66. On February 8, 2012, Nokia Corporation announced 4,000 layoffs to take place at smartphone manufacturing plants in Europe by the end of 2012, to move assembly closer to

⁹ Stephen Elop, *Full Text: Nokia CEO Stephen Elop's 'Burning Platform' Memo*, Wall Street Journal Blog (Feb. 9, 2011), <http://blogs.wsj.com/tech-europe/2011/02/09/full-text-nokia-ceo-stephen-elops-burning-platform-memo/>.

1 component suppliers in Asia. On June 14, 2012, Nokia announced 10,000 layoffs globally by
 2 the end of 2013 and shut production and research sites in Finland, Germany, and Canada in line
 3 with continuing losses and its stock price falling to its lowest point since 1996. In total, Nokia
 4 laid off 24,500 employees by the end of 2013. On June 18, 2012, Moody's downgraded Nokia's
 5 bond rating to junk. Nokia's CEO admitted that the company's inability to foresee rapid changes
 6 in the mobile phone industry was one of the major reasons for the problems.

7 67. On September 2, 2013, Microsoft announced that it would acquire Nokia's mobile
 8 device business. Since then, Microsoft has laid off thousands of employees at manufacturing
 9 plants and research facilities from Redmond to Finland to China. In December 2013, European
 10 Commissioner Joaquin Almunia said in a speech in Paris that he approved of the \$7.2 billion sale
 11 but recognized the danger that Nokia will now attempt to "extract higher returns."¹⁰

12 The Declining Value of Nokia's SEP Portfolio

13 68. Since 2003, new technologies and product features—many of which have nothing
 14 to do with 2G, 3G, or 4G—have become prevalent and a driving force behind consumer demand.
 15 As a result, the legacy 2G and 3G technologies, and even 4G technology, necessarily represent a
 16 smaller component of the overall product price. HTC has introduced additional non-telecom
 17 features such as: user interface enhancements, motion gesture, camera enhancements, audio
 18 enhancements, motion launch, flip to mute, and photo editor.

19 69. Nokia's SEPs are not only less valuable today as a result of these other
 20 advancements, but the portfolio will dramatically reduce in coming years as many SEPs continue
 21 to expire. On information and belief, at least one-third of Nokia's 2G, 3G, and 4G SEPs will
 22 expire between 2017 and 2020. Meanwhile, the rate of new patents issued to Nokia has declined
 23 dramatically. At a minimum, Nokia's expiring patents and declining invention rates should be
 24 taken into account for any new royalty rate.

25
 26 ¹⁰ Joaquin Almunia, *IP Summit 2013 Press Release: Intellectual Property and Competition Policy*,
 27 European Commission (Dec. 9, 2013), http://europa.eu/rapid/press-release_SPEECH-13-1042_en.htm.

70. On information and belief, in 2011, Nokia sold 2,000 wireless patents to MOSAID Technologies Inc. (now known as Conversant Intellectual Property Mangement Inc.) and its subsidiary Core Wireless Licensing, S.a.r.l., including about 1,215 essential patents.

71. On information and belief, in 2012, Nokia sold 450 wireless and video patents and patent applications to Sisvel International, an Italian patent licensing company, including some 350 patents that were declared essential to standards for GSM, 3G, and 4G/LTE.

72. On information and belief, in 2012, Nokia sold to Vringo, Inc. (“Vringo”) more than 500 patents that, according to Vringo, “encompasses a broad range of technologies relating to cellular infrastructure, including communication management, data and signal transmission, mobility management, radio resources management and services. Thirty one of the 124 patent families acquired have been declared essential by Nokia to wireless communications standards.”

73. On information and belief, in 2012, Acacia Research Corporation, through a subsidiary, acquired patents for wireless infrastructure and user equipment technology from Nokia Siemens Networks relating to 2G, 3G, and 4G wireless technologies.

74. In addition to these examples, Nokia has likely entered additional transactions in which it sold or otherwise divested itself of additional SEPs that must be considered in assessing a reasonable royalty for its remaining portfolios.

E. NOKIA’S BREACH OF ITS OBLIGATION TO LICENSE ITS SEPS ON FRAND TERMS

75. HTC’s licenses to Nokia’s SEPs are set to expire on December 31, 2016.

76. HTC has repeatedly made clear its willingness and intention to enter new license agreements with Nokia, and that it will pay license fees that are fair and reasonable. HTC has negotiated, and is prepared to negotiate, in good faith with Nokia to obtain FRAND rates for the licenses to all patents that Nokia has declared to be essential to the Mobile Cellular Standards.

77. But with willful disregard of the commitments it made to ETSI, 3GPP, and the IEEE, Nokia has refused to provide HTC a FRAND rate to license Nokia’s SEP portfolio. Instead, Nokia is exploiting the significant economic power it gained as a result of the purported

1 inclusion of its technology into the Mobile Cellular and Wireless Standards by demanding
2 royalty payments that are wholly disproportionate to the royalty rate that its patents should
3 command under any reasonable royalty determination, and far in excess of any independent
4 value they would have absent their inclusion in the standards.

5 78. When it became clear that Nokia would not offer a reasonable rate on its own,
6 HTC retained two telecommunications industry experts to determine the value of Nokia's SEPs
7 while taking into consideration other SEPs that may have been obtained through acquisitions of
8 other companies, including Alcatel-Lucent. Among other things, that analysis considered
9 relevant market factors (e.g., slower industry growth, declining average selling price, lower
10 margins), the technical merits of Nokia's SEP portfolio, the increasing importance of product
11 features unrelated to Nokia's SEPs, emerging alternative technologies, and other well-established
12 patent valuation principles. The analysis demonstrated that Nokia's demand was in far excess of
13 a rate that would be fair and reasonable.

14 79. In HTC's market segment, profit margins are small or non-existent. Therefore,
15 any unfair or unreasonable royalty will significantly impact overall profit margin and prevent
16 HTC from being competitive in the marketplace. It is therefore essential for HTC to obtain
17 FRAND rates for Nokia's SEPs.

18 80. Absent the negotiating leverage that Nokia obtained through the standards
19 process, Nokia would not have been in a position to exploit its essential patents to attempt to
20 extort unreasonable terms from HTC.

21 81. As the December 31, 2016 expiration of the 2003 license agreement, as amended,
22 between Nokia and HTC approaches, HTC now faces loss of coverage from protection against
23 patent infringement actions and exposure to a high risk of litigation in the United States and
24 other jurisdictions, of devices that allegedly utilize Nokia's claimed essential patents.

25 82. Notably, Nokia is among hundreds of companies with purported essential patents
26 relevant to these technologies. If each company with a FRAND commitment is permitted to
27 charge excessive royalties, the burden on downstream products will leave little room for

1 profitability, discourage further investment, and chill device innovation and competition
2 altogether. Not only would device manufacturers like HTC be harmed in their business, but so
3 too would consumers, who ultimately would suffer higher device prices and less innovation.

4 **CLAIMS FOR RELIEF**

5 **FIRST CAUSE OF ACTION**

6 **(Breach of Contract)**

7 83. HTC realleges and incorporates by reference the allegations set forth in all of the
8 preceding paragraphs, as though fully set forth herein.

9 84. Nokia entered into contractual commitments with ETSI, 3GPP, the IEEE and their
10 respective members, participants, and implementers relating to the Mobile Cellular and Wireless
11 Standards.

12 85. Each third party that would potentially implement the Mobile Cellular and
13 Wireless Standards was an intended beneficiary of those contracts.

14 86. HTC is an intended beneficiary of those contracts.

15 87. Nokia was contractually obligated to offer a license to its SEPs consistent with the
16 applicable IPR policy of ETSI and 3GPP, including that such a license be on FRAND terms.

17 88. Nokia was further contractually obligated to offer a license to its SEPs consistent
18 with the applicable IPR policy of the IEEE-SA, including that such a license be on RAND terms.

19 89. Nokia has refused to offer a FRAND rate. Instead, HTC understands that Nokia
20 is basing the demanded royalties for its SEPs on the value of entire devices (e.g., smartphones
21 and tablet computers). The law requires, however, that royalties be set using as the royalty base
22 (at most) the smallest saleable unit that substantially embodies the patented technology, to which
23 a reasonable royalty rate is then applied. For these patents, that royalty base would be (at most)
24 the baseband processor chip that performs telecommunications processing functions. The law
25 also requires that the royalties be set to reflect the value of the patented technology alone. For
26 Nokia's SEPs, that would acknowledge the decline in the significance of the technology,
27 including that this technology has declining impact on consumer demand.

1 90. Nokia has refused to accept the FRAND rate calculated by HTC's
2 telecommunications technology and market experts, who HTC hired to evaluate Nokia's SEP
3 portfolio. By failing to reduce rates to account for a declining value in its portfolio, Nokia is
4 attempting to extract unfair and unreasonable rates by demanding rates higher than the fair and
5 reasonable value of the patented technology.

6 91. Nokia breached its contracts by refusing to license its SEPs under reasonable
7 rates, with reasonable terms, and on a non-discriminatory basis.

8 92. As a result of Nokia's contractual breach, HTC has been injured in its business or
9 property, and is threatened by a gap in coverage from patent infringement protection and thus an
10 imminent loss of profits, loss of customers and potential customers, and loss of goodwill and
11 product image.

12 93. HTC has suffered and will continue to suffer irreparable injury by reason of the
13 acts, practices, and conduct of Nokia alleged above until and unless the Court enjoins such acts,
14 practices, and conduct.

15 **SECOND CAUSE OF ACTION**

16 **(Implied Covenant of Good Faith and Fair Dealing)**

17 94. HTC realleges and incorporates by reference the allegations set forth in all of the
18 preceding paragraphs, as though fully set forth herein.

19 95. Nokia has acted in bad faith by refusing to license Nokia's patents essential to the
20 Mobile Cellular and Wireless Standards on FRAND terms and rejecting HTC's fair, reasonable,
21 and nondiscriminatory offer, while forcing HTC to face loss of coverage from protection against
22 patent infringement actions and exposing HTC to litigation in the United States and other
23 jurisdictions, for devices that allegedly utilize Nokia's claimed essential patents

24 96. Nokia has, accordingly, wrongfully and intentionally breached the covenant of
25 good faith and fair dealing by denying HTC the benefits to which they are entitled under Nokia's
26 FRAND obligations.

THIRD CAUSE OF ACTION

(Promissory Estoppel)

97. HTC realleges and incorporates by reference the allegations set forth in all of the preceding paragraphs, as though fully set forth herein.

98. Nokia made a clear and definite promise to licensees through its public commitments to ETSI, 3GPP, and the IEEE, and that it had granted, or would grant, to third parties licenses to any essential patents under reasonable rates, with reasonable terms, and on a non-discriminatory basis.

99. The intended purpose of Nokia's promises was to induce reliance upon this promise so that companies like HTC would produce mobile phone products compatible with the relevant standards. Nokia knew or should have reasonably expected to know that it would induce reliance on these promises by companies such as HTC.

100. HTC developed and marketed its products and services in reliance on Nokia's promises, including making its products and services compliant with Mobile Cellular and Wireless Standards.

101. HTC entered into license agreements with Nokia in reliance on Nokia's continued promises, including assurances that Nokia would continue to license its SEPs under reasonable royalty rates, with reasonable terms, and on a non-discriminatory basis.

102. Nokia is estopped from reneging on these promises to ETSI, 3GPP, the IEEE and their respective members, participants, and implementers under the doctrine of promissory estoppel.

PRAYER FOR RELIEF

WHEREFORE, HTC prays for relief as follows:

A. Adjudge and decree that Nokia is liable for breach of contract;

B. Declare that Nokia has not offered royalties to HTC under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination;

1 C. Enjoin Nokia from further demanding excessive royalties from HTC that are not
2 consistent with Nokia's FRAND obligations;

3 D. Declare that HTC is entitled to license from Nokia any and all patents that Nokia
4 deems "essential" and/or has declared "essential" to the Mobile Cellular and Wireless Standards
5 under reasonable rates, with reasonable terms and conditions that are demonstrably free of any
6 unfair discrimination;

7 E. Determine the FRAND rates that HTC is entitled to for each of the Mobile
8 Cellular and Wireless Standards;

9 F. Enter judgment awarding HTC a license from Nokia to any and all patents that
10 Nokia deems "essential" and/or has declared "essential" to the Mobile Cellular and Wireless
11 Standards under the Court's determined FRAND rate, with reasonable terms and conditions that
12 are demonstrably free of any unfair discrimination;

13 G. Enter judgment against Nokia for the amount of damages that HTC proves at trial,
14 including, as appropriate, exemplary damages;

15 H. Enter a judgment awarding HTC its expenses, costs, and attorneys' fees under
16 applicable laws;

17 I. Award HTC pre-judgment and post-judgment interest to the full extent allowed
18 under the law, as well as its costs; and

19 J. For such other and further relief as the Court deems just and proper.
20

21 Dated: December 29, 2016
22

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